

Hearing Date: September 21, 2022 at 9:30 a.m. (AST)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR
PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO
RICO, *et al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 03283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR
PUERTO RICO,

as representative of

THE EMPLOYEES RETIREMENT
SYSTEM OF THE COMMONWEALTH OF
PUERTO RICO (the “ERS”),

Debtor.

PROMESA
Title III

No. 17 BK 03566-LTS

UBS FINANCIAL SERVICES INCORPORATED OF PUERTO RICO’S
REPLY IN FURTHER SUPPORT OF ITS MOTION TO ENFORCE THE PLAN OF
ADJUSTMENT AND FOR RELATED INJUNCTIVE RELIEF

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (Bankruptcy Case No. 19 BK 5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

UBS Financial Services Incorporated of Puerto Rico,² by and through the undersigned counsel, hereby submits this reply in further support of its Motion to Enforce the Plan of Adjustment and For Related Injunctive Relief, filed on July 28, 2022 (the “Motion to Enforce” or “Motion”). (Dkt. 21651)³ In further support of the Motion, UBS states as follows:

1. On July 28, 2022, UBS filed a motion asking the Court to enjoin the ERS and seven of its former beneficiaries from pursuing an action filed in the Puerto Rico Commonwealth Court seeking recovery of damages that the ERS purportedly suffered as a result of the 2008 issuance of pension obligation bonds. As UBS explained, the Plan transfers the claims asserted in the Commonwealth Action to the Avoidance Actions Trust (the “Trust”). (Dkt. 21651) Since UBS filed its motion, both the Avoidance Actions Trustee (the “Trustee”) and the Official Committee of Unsecured Creditors (the “UCC”), which represents the constituency of creditors that received the claims against UBS, have joined to support UBS’s Motion. (Dkt. 22186, 22187) Thus, UBS and its ultimate adversaries in the pending Underwriter Adversary Action now join forces to ask the Court to enforce the Plan and to enjoin the Commonwealth Action because the existence of that action places UBS at risk of a double recovery and effectively destroys the Trustee’s ability to settle the claims against UBS.

² On July 14, 2021, UBS Financial Services Inc. (“UBS”) and UBS Financial Services Incorporated of Puerto Rico entered into a Merger Agreement (the “Merger”) pursuant to Section 253 of the Delaware General Corporation Law and Section 3733 of the General Corporations Act (2009) of Puerto Rico. As a result of the Merger, UBS Financial Services Incorporated of Puerto Rico merged into UBS and ceased to exist, with UBS being the surviving corporation. UBS recently filed a Motion to Substitute Party. (Dkt. 22222)

³ All undefined capitalized terms have the same meanings set forth in UBS’s Motion to Enforce.

2. Six individual former ERS Beneficiaries – all plaintiffs in the Commonwealth Action – oppose UBS’s motion.⁴ (Dkt. 22175, hereinafter “Opp.”) These ERS Beneficiaries do not dispute UBS’s interpretation of the provisions of the Plan that transferred the ERS’s claims to the Trust. Rather, they mischaracterize their own pleading in an attempt to convince the Court that the claims they have asserted in the Commonwealth Action are not the same claims that were transferred to the Trust. Tellingly, the ERS Beneficiaries studiously avoid quoting from their complaint because their own pleading refutes their argument. In any case, parsing the exact claims in the Trustee’s action and the Commonwealth Action misses the point – both cases seek relief against UBS arising out of its role in the issuance of the ERS bonds. The Trustee’s counsel’s strategy in choosing legal theories that they believe put the Trustee in the best position to recover funds for the creditors has no bearing on the Trustee’s ownership of this group of claims. Indeed, both litigants seek recoupment of the fees paid to UBS. UBS should not be expected to make such payments to two separate creditor groups. Rather, it should be uncontroversial that UBS should only be required to resolve its claims against the party given those claims under the Plan.

3. If the seven individual ERS Beneficiaries are allowed to wrest control away from the Trustee and obtain a windfall for themselves, it would undercut the enormous effort

⁴ UBS seeks relief against all seven of the ERS Beneficiaries who are plaintiffs in the Commonwealth Action even though one of those seven plaintiffs did not join the opposition to the Motion to Enforce. UBS further notes that the six ERS Beneficiaries have filed a motion for affirmative relief and a merits opposition to UBS’s Motion, while asserting that their filings were made “without submitting to the jurisdiction of this Court.” (Opp. at 1) They cannot have their cake and eat it too in this fashion. This type of vague reservation of a jurisdiction defense is invalid and constitutes a waiver. *See, e.g., Blockowicz v. Williams*, 630 F.3d 563, 566 (7th Cir. 1993) (holding party waived personal jurisdiction by merely asserting in a footnote that the party “contests that the [district court] has personal jurisdiction over it and does not waive any arguments it has pursuant to Fed.R.Civ.P.12(b)(2).”)

undertaken to negotiate a compromise that serves the interests of all constituencies to the PROMESA proceedings. The government retirees were treated well under the Plan and should not be coming back now to double dip on their payout. If they wanted to recast the Plan so that they not only got direct payments, but also retained the ERS's litigation rights, they should have come forward before the Plan was approved, not afterwards. For these reasons and other reasons explained below, the Court should reject the ERS Beneficiaries' arguments and issue the requested injunction to enforce the Plan.

I. THE COURT SHOULD ENFORCE THE PLAN AND ENJOIN FURTHER PROSECUTION OF THE COMMONWEALTH ACTION.

4. As UBS previously explained, its interests are not the only interests at stake in considering whether to enjoin the ERS Beneficiaries from continuing to litigate the Commonwealth Action. (Motion ¶¶ 2, 15-16, 22) Two other parties, the Trustee and the UCC, have now filed joinders to UBS's Motion. (Dkt. 22186, 22187) Both of those parties represent the interests of the creditors who are the beneficiaries of the Trust that now owns the claims asserted in the Commonwealth Action. The joinders emphasize what UBS has itself argued in its Motion: that continued prosecution of the Commonwealth Action cannot be reconciled with the distribution of rights to different classes of creditors under the Plan. (Motion ¶ 2)

5. The Plan expressly granted the Trustee the exclusive "rights, powers and duties" "to investigate, prosecute, settle and/or abandon rights, Causes of Action, or litigation of the Avoidance Actions Trust." (*Id.* § 78.6) Allowing other parties to pursue overlapping claims that seek similar relief in another court will destroy the Trustee's ability to settle or recover on claims given to the Trust under the Plan. As a result, ***UBS, the Trustee, and the UCC, together***, are asking the Court to declare that the Trustee controls the claims against UBS arising out of the 2008 ERS bond issuances. If the Court allows control over these claims to be shared among the

Trustee representing the unsecured creditors and seven rogue ERS Beneficiaries, then UBS will not be in a position to settle with either group because UBS will be unable to obtain the releases needed for any meaningful settlement. Further, if both cases were to go to judgment, then UBS would face a grossly unfair double recovery. The Plan did not contemplate such dubious outcomes.

6. It bears emphasis that the transfer of these claims to the Trustee took place as part of an overall bargain in which the government employee retirees were treated with the utmost fairness and due process. On these motions, the ERS Beneficiaries have not explained how enforcing the rights of other creditors under the terms of the Plan will prejudice their interests when their interests were already generously provided for by the Plan.

7. The ERS Beneficiaries also have not explained why this Court should not enforce its own orders. Their argument that UBS's request should be presented instead to the Commonwealth Court (Opp. ¶ 7) makes no sense. The issue of who owns the claims turns on an interpretation of this Court's orders, and this Court indisputably has the authority to enforce its own orders. (Motion ¶ 7) The ERS Beneficiaries cite no authority suggesting otherwise. All of the interested parties are present before this Court. And they can present, and have presented, their arguments to this Court. There is no reason to force the Trustee and UCC to intervene in the Commonwealth Action. Nor is it appropriate to ask the Commonwealth Court to interpret this Court's orders.

8. In short, the Court can and should enjoin the Commonwealth Action to enforce the plain terms and clear purpose of the Plan and to protect the interests of the creditors that were intended to benefit from it.

II. THE FORMER ERS BENEFICIARIES ARE PURSUING THE SAME CLAIMS THAT BELONG TO THE AVOIDANCE ACTIONS TRUST.

9. The ERS Beneficiaries’ main argument against an injunction is that the claims transferred to the Trust are not the same as the claims they have asserted in the Commonwealth Action. (Opp. ¶¶ 21-26) But they can only make that argument by ignoring the allegations in their own pleading. Indeed, the ERS Beneficiaries falsely contend that their claims arise out of “UBS’ tortious conduct prior to issuance of the POB’s” – *without quoting or citing their own pleading* to support that characterization. (Opp. ¶¶ 8) The official translation of the Commonwealth Complaint demonstrates that the claims for relief in the Commonwealth Action arise out of the 2008 transactions in which UBS underwrote the ERS Bonds.

10. Specifically, the Commonwealth Complaint alleges that “UBS violated its contractual, non-contractual and fiduciary obligations towards the System” “[b]y not only endorsing, but also *participating as the lead underwriter in the illicit and grossly negligent issuance of the Bonds*” (4th AC ¶ 6.11) and that UBS violated its “underwriting contracts with the System *for the issue and sale of the Bonds.*” (4th AC ¶ 6.18) (emphasis added)

11. The Amended Complaint in the Underwriter Adversary Action challenged the same bond transactions (19-00280, Dkt. 28 ¶¶ 48-49), asserted claims for breach of contract arising out of UBS’s purchase contracts with the ERS (*id.* ¶¶ 511, 513, 544, 546), and sought “*all of the damages* that [the ERS] incurred as a result of Defendants’ breaches of contracts” (*id.* Prayer for Relief ¶ 6) (emphasis added).

12. The Commonwealth Court itself has described the claims in a manner that refutes the ERS Beneficiaries’ new characterization of their case. That court said the action before it pertains to “*the transaction between UBS and the Retirement System*” and UBS’s actions “*when it sold, marketed, devised or did not devise the sale of these bonds.*” (Ex. A, Certified

Translation of Transcript of Hearing held in the Commonwealth Action on November 26, 2019, at 35-36) (emphasis added)

13. The Plan defines the transferred claims by referring to the Amended Complaint in the Underwriter Adversary Action because that was the operative complaint at the time. (Plan § 1.108 & Exhibit B) Since UBS filed its Motion, the Trustee filed a Second Amended Complaint in the Underwriter Adversary Action. (19-00280-LTS, Dkt. 49) Given that the approved Plan has canceled the ERS bonds (and also makes provision for full payments to the government retirees), the Trustee has understandably restyled its Complaint to pursue slightly different claims and forms of relief.⁵ This is consistent with the Plan’s express grant to the Trustee of the exclusive “rights, powers and duties” “to investigate, prosecute, settle and/or abandon rights, Causes of Action, or litigation of the Avoidance Actions Trust.” (*Id.* § 78.6) That new approach merely reflects the litigation strategy of the Trustee’s counsel. The Trustee could have chosen to borrow from the ERS Beneficiaries complaint if the Trustee thought it served its purposes. In any event, the relief sought by the Trustee still overlaps with the relief sought by the ERS Beneficiaries. The Trustee seeks the return of “the funds paid to the Underwriting Defendants [including UBS] . . .” (SAC ¶ 223; *see also id.* ¶ 16 & Ex. 16) The Commonwealth Action similarly involves a request for rescission of the underwriting fees. (4th AC ¶ 6.22 (“UBS and UBS Consulting, illegally charged substantial commissions and fees and discounts related to the reckless, illicit and grossly negligent issuance and sale of the Bonds and must return them to the System.”))

⁵ UBS and the other underwriter defendants intend to move to dismiss the claims in the Second Amended Complaint.

14. Moreover, even if the Trustee had chosen to abandon all of its claims against UBS in its Amended Complaint, that would not give the ERS Beneficiaries the right to pursue those claims. A decision by the Trustee to abandon certain claims – which it has the authority to do – would not cancel the transfer of property or return it to the ERS. The ERS Beneficiaries do not cite any provision of the Plan or any other authority creating a reversionary interest in the claims that were transferred to the Trust. In short, regardless of what changes the Trustee made in the Underwriter Adversary Action Complaint, the claims arising out of the 2008 ERS bond transactions still belong to the Trust, and not the ERS Beneficiaries.

15. The ERS Beneficiaries next argue that their claims are distinct because they are pursuing relief based on tort law. (Opp. ¶¶ 21-23) Here, they have told the Court a half-truth. While their pleading has a tort claim, it also contains a cause of action for breach of UBS’s underwriting contracts. (4th AC ¶¶ 6.1-6.23) But even if the Commonwealth Action was based solely on violations of tort law, it would not matter. What matters is that the ERS Beneficiaries are pursuing the same relief as the Underwriter Adversary Action. As UBS explained in its motion, asserting an alternate legal theory of recovery cannot justify double recovery for the same injury. *See Garcia-Rivera v. Allison*, No. 04-1757(PG), 2006 WL 2261065, at *4 (D.P.R. Aug. 7, 2006) (dismissing claim under Article 1802 because plaintiff’s damages arose from breach of contract; therefore, plaintiff “d[id] not have a separate cause of action for negligence”) (internal quotations omitted); Restatement (Second) of Judgments § 25 (1982) (“Having been defeated on the merits in one action, a plaintiff sometimes attempts another action seeking the same or approximately the same relief but adducing a different substantive law premise or ground. This does not constitute the presentation of a new claim when the new premise or ground is related to the same transaction or series of transactions....”). (*See also* Motion ¶ 25)

16. Tellingly, the ERS Beneficiaries have cited no authority that would require UBS to pay the same damages to both the Trust and the ERS. Because the ERS Beneficiaries in the Commonwealth Action and the Trustee in the Underwriter Adversary Action both purport to (i) assert rights formerly held by the ERS, (ii) challenge the same transactions, and (iii) seek overlapping relief, they are asserting the same claims. *Cf.* Restatement (Second) of Judgments § 24 (1982) (claims are same for purposes of *res judicata* where they arise out of “all or any part of the transaction, or series of connected transactions”).

17. Finally, the ERS Beneficiaries are wrong to the extent they assert that the question of overlap of the contract and fiduciary duty claims has already been decided by this Court or the Commonwealth Court. (Opp. ¶¶ 9-20) Neither this Court nor the Commonwealth Court has ever addressed the issue. Indeed, UBS’s motions to lift the automatic stay to allow for the filing of a counterclaim in the Commonwealth Action had nothing to do with ownership of these claims under the Plan, which did not even exist at that time.⁶ (Dkt. 8823, 12561)

18. Nor did the Commonwealth Court decide whether the contract and tort claims in that court overlap with the claims in the Underwriter Adversary Action. Rather, for purposes of addressing discovery, the Commonwealth Court discussed whether the ERS Beneficiaries had alleged that the bonds were invalid under the Puerto Rico Constitution. (Ex. A at 19-28) No party presented any motion either before or at that hearing asking the Commonwealth Court to decide whether there was overlap with the Underwriter Adversary Action. (*See generally id.*)

⁶ When this Court granted, in part, UBS’s motion to lift the automatic stay so that UBS could request permission to file counterclaims in the Commonwealth Action, it expressly refused to issue any ruling addressing the substance or nature of the claims in the Commonwealth Action. (Dkt. 12986, 12989)

19. In the Motion, UBS does not argue that the ERS Beneficiaries have pleaded a claim for invalidity of the ERS bonds. That point is irrelevant to resolving the Motion. Rather, UBS's position here is that the ERS Beneficiaries' claims for breach of an underwriting contract and breach of fiduciary duties purportedly owed as an underwriter and advisor to the ERS overlap with the claims in the Underwriter Adversary Action and were therefore transferred to the Trustee.

III. ARTICLE 517 OF LAW 53-2021 DOES NOT PRECLUDE THE COURT FROM ISSUING AN INJUNCTION.

20. In their attempt to avoid an injunction, the ERS Beneficiaries also point to Act 53-2021, which was enacted by the Puerto Rico legislature in furtherance of the Plan. (Opp. ¶¶ 27-29) Specifically, they cite one sentence of that act – Article 517 – which states (in translation) that the “Adjustment Plan transactions cannot be used to mitigate causes of action under Article No. 3-2013, as amended.” (*Id.* ¶ 27) Notably, UBS, the Trustee and the UCC do not seek to eliminate any causes of action with this Motion. Rather, the Motion merely concerns who gets control of those litigation rights. Nothing in Article 517 precluded the ERS or the ERS Beneficiaries from trading litigation rights in the bargaining over the Plan in order to secure payments for the retirees – which is what they did. In short, the *transfer* of claims to the Trust does not conflict with the language of Article 517.

21. Moreover, to the extent that the ERS Beneficiaries believe provisions of the Plan conflict with Article 517, they should have raised those arguments before the Plan was confirmed. They had an opportunity to be heard on this point and failed to present such argument. They should not be allowed to challenge the Plan after the fact based on an argument they had the opportunity to raise and never did.

22. Finally, to the extent that there is an inconsistency between the Plan and Act 53-2021, then the Plan preempts the local statute under the Supremacy Clause and the express provisions of the Plan itself. Specifically, the Plan would preempt that one sentence – Article 517 – without any impact to the remainder of Act 53-2021. This Court’s confirmation order is crystal clear on the point – “[a]ll laws enacted from and after the commencement of the Title III Cases to the extent they are inconsistent with the transactions contemplated by the Plan are also unenforceable.” (Dkt. 19813 ¶ 3(B); *see also* Plan § 89.3 (preemption of laws generally); 48 U.S.C. § 2103 (“[T]he provisions of this [PROMESA] chapter shall prevail over any general or specific provisions of territory law, State law, or regulation that is inconsistent with this Chapter”); 48 U.S.C. § 2165 (upon Plan provision the court may adjust the political powers and property of the PROMESA debtors)) In sum, any inconsistency between the Plan and Section 517 of Act 53-2021 is preempted to the extent necessary to properly assign the claims at issue to the Trustee.

IV. THE ERS BENEFICIARIES DO NOT HAVE ANY DIRECT, PERSONAL CLAIMS AGAINST UBS.

23. In a last-ditch effort to avoid an injunction, the ERS Beneficiaries argue that they possess a direct cause of action against UBS. (Opp. ¶¶ 30-32) UBS anticipated that argument in its Motion and thoroughly explained why it fails. (Motion ¶¶ 35-65) Presumably, because they have no response, the ERS Beneficiaries do not address any of UBS’s arguments. They do not explain how UBS could owe duties to them directly when it never formed any contractual or any other type of relationship with them as individuals. (Motion ¶¶ 36-42) Nor do they explain how the Court can accept their interpretation of Act No. 3-2013 without violating UBS’s constitutional rights. Indeed, as UBS explained, a legislature cannot create new substantive rights or impose duplicative liability on a party based on past transactions or conduct. Such

overreaching is precluded by multiple provisions of the Constitutions of Puerto Rico and the United States. (Motion ¶¶ 52-65) Again, the ERS Beneficiaries had almost two months to prepare their opposition and they failed to address these Constitutional points.

24. UBS respectfully submits that the Court need not address the Constitutional issues because the Court should construe laws in a manner that renders them constitutional. *P.R. Renewal Party v. Commonwealth of Puerto Rico*, 115 D.P.R. 631, 642 (1984), 15 P.R. Offic. Trans. 828, 840 (1984) (“[T]he Judicial Power—in deference to the Legislative Power—should strive to attain congruent interpretations that are compatible with maintaining the constitutionality of a statute.”); *Teachers’ Ass’n v. Dep’t of Educ.*, 200 D.P.R. 974, 988 (2018), ___ P.R. Offic. Trans., ___ (2018) (Rivera García, J., concurring) (noting “obligation to strive to achieve an interpretation consistent with the upholding of the constitutionality of a statute”). The fairest reading of Act No. 3-2013 as applied to derivative claims pending at the time of that law’s adoption is that the statute granted the beneficiaries of the ERS derivative standing to pursue the claims owned by the ERS. That reading is consistent with the Puerto Rico and U.S. Constitutions.

25. The ERS Beneficiaries’ conduct to date is also consistent with the view that they were merely derivative plaintiffs and not asserting their own direct rights. They pleaded each of their *five* complaints as derivative suits brought on behalf of the ERS and never sought to pursue a class action on behalf of individual beneficiaries. (Motion ¶¶ 8-10, 35)

26. For all of the foregoing reasons, and those set forth more fully in UBS’s Motion and the Trustee’s and UCC’s Joinders, the Court should enjoin the ERS and the seven ERS Beneficiaries from continuing to litigate the Commonwealth Action.

Respectfully Submitted:

In San Juan, Puerto Rico, this 17th day of September, 2022.

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EXHIBIT A

CERTIFIED TRANSLATION:
TRANSCRIPT OF HEARING
HELD TUESDAY, NOVEMBER 26, 2019

Page 1 of 69

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SAN JUAN SUPERIOR PART

EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH
OF PUERTO RICO, ETC.

Plaintiffs

v.

UBS FINANCIAL SERVICES INCORPORATED OF
PUERTO RICO AND UBS CONSULTING SERVICES
OF PUERTO RICO; ETC

Defendants

CIVIL NO.: KAC 2011-1067 (901)

RE: BREACH OF CONTRACT
DAMAGES

Hearing held on Tuesday, November 26, 2019 at the San Juan Court of First Instance,
Room 901 of the San Juan Judicial Center before the Honorable Rebecca de León Ríos, beginning
at 10:09 a.m.

I, Gladys Rodríguez-Fornaris, MA in Translation (UPR 1995), DO CERTIFY that I have translated into English the foregoing document, as submitted in Spanish by the interested party; and that said translation is true and correct to the best of my knowledge and abilities.

S/ GLADYS RODRÍGUEZ-FORNARIS

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TRANSCRIPT OF HEARING
HELD TUESDAY, NOVEMBER 26, 2019

Page 2 of 69

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Page 3 of 69

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I, Gladys Rodríguez-Fornaris, MA in Translation (UPR 1995), DO CERTIFY that I have translated into English the foregoing document, as submitted in Spanish by the interested party; and that said translation is true and correct to the best of my knowledge and abilities.

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TRANSCRIPT OF HEARING
HELD TUESDAY, NOVEMBER 26, 2019

Page 4 of 69

1. IN SAN JUAN, PUERTO RICO
2. TUESDAY, NOVEMBER 26, 2019
3. P-R-O-C-E-E-D-I-N-G-S
- 4.
5. ATTY. HERNÁNDEZ: Good morning, Your Honor. Attorney
6. Federico Hernández Denton, for...for the plaintiffs. I'm accompanied by
7. attorney Ivelisse Ortiz, attorney José Andréu Fuentes, attorney
8. Harold Vicente Colón, attorney Walter Lebrón, attorney
9. Francisco Pujols, and attorney Rodolfo Carrión.
10. ATTY. QUIÑONES: Good morning, Your Honor. Appears attorney
11. Roberto Quiñones, representing the defendants.
12. ATTY. PALACIOS: Good morning, Your Honor. Myrgia Palacios
13. Cabrera, representing the defendants.
14. ATTY. LOCKWOOD: Paul Lockwood, for UBS.
15. ATTY. DISALVO: Good morning, Your Honor. Nicole DiSalvo for
16. the defendants.
17. HON. JUDGE: Good morning, we are here this morning to
18. discuss some pending issues in this case. There's a Motion for
19. Summary Judgment filed. Yesterday I received a courtesy copy of
20. a motion whereby the plaintiffs submitted to the defendants a
21. CD with 31,671 documents.
22. Did the defendants receive that documentary evidence?
23. Because there was an issue on the production of documentary evidence as
24. for the plaintiffs. That the court was being asked to impose

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HELD TUESDAY, NOVEMBER 26, 2019

Page 5 of 69

1. sanctions as the evidence had not been produced.
2. ATTY. QUIÑONES: Yes, Your Honor. Roberto Quiñones, for
3. the record. And I would like to—mention that attorneys
4. Lockwood and DiSalvo are using the services of translator
5. Juan Segarra, translating the proceedings.
6. HON. JUDGE: Is there any objection from plaintiff's
7. counsel?
8. MALE VOICES: No objection.
9. HON. JUDGE: No objection.
10. ATTY. QUIÑONES: And in the event that they wish
11. to make any statement to the court, we ask the Court's permission
12. to do it in English and have it translated.
13. HON. JUDGE: The proceedings are in Spanish, counsel. They
14. must be translated.
15. ATTY. QUIÑONES: Yes, translated by Mr. Segarra.
16. HON. JUDGE: Any objection?
17. MALE VOICES: None.
18. HON. JUDGE: None, OK.
19. ATTY. QUIÑONES: Regarding the production, yes, Your
20. Honor, we received it. And that CD— we believe that it—
21. contains the, the documents that were inside 20 boxes of documents.
22. HON. JUDGE: That were digitized.
23. ATTY. QUIÑONES: They were digitized.
24. HON. JUDGE: That a commitment had been made, according to

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S/ GLADYS RODRÍGUEZ-FORNARIS

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HELD TUESDAY, NOVEMBER 26, 2019

Page 6 of 69

1. the motions, to be digitized.

2. ATTY. QUIÑONES: We believe that these are boxes

3. of documents that had been announced in April 2017.

4. Which had been collected before we notified

5. a Request for Production of Documents.

6. So those documents, we understand, are not responsive

7. to the request for production, since they are documents that

8. apparently the Retirement System provided its counsel

9. at that time, without having had a request for

10. production of documents. Since those boxes had been

11. collected by April 2017, which is when the

12. Request for Production had been notified.

13. As for the CD, consists, that CD, actually, it has

14. approximately more than 30 thousand pages. And are all merged

15. in two PDF files. Basically, a scan was made of the

16. entire production, without dividing it document by document. We

17. don't know where the documents come from, from files of

18. which custodians the documents come from. Many of the

19. documents are illegible.

20. It's—it's a production that's simply useless,

21. Your Honor, for the purpose of taking depositions of

22. witnesses. We don't know where a document begins, where the

23. document ends. It's simply an effort that

24. we believe that it wasn't done in a dutiful manner. Because those

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 7 of 69

1. documents are useless, as they were produced.

2. HON. JUDGE: Plaintiffs.

3. ATTY. HERNÁNDEZ: Your Honor, to clarify our

4. position. The documents submitted are documents,

5. some were, they had been— that the Retirement System

6. had, and others that were recently obtained.

7. Part of the problem we've had in this process is that the

8. Retirement System, due to Hurricane María, had to

9. vacate the building. Its system— digital, some of them

10. were substantially damaged. And they, in turn, have been—

11. we've been in this process asking them to try,

12. to make all the necessary searches.

13. So some of the documents we submitted

14. last week, are documents that we had

15. beforehand. Other documents are new documents that we

16. were able to obtain.

17. It's really our intention to produce all the necessary

18. documents. And in fact, we are surprised by the position of, of, of UBS.

19. Because the, the, the, the, the answer to our Request for

20. Documents, they also submitted documents that

21. were repetitive, documents that we uh found difficult

22. as well, to organize during, during this process.

23. And what we've tried is, in light of the, the position that

24. they have been taking, that they don't have eno— the

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 8 of 69

1. necessary documents, we've tried to with—
2. submit the information that the Retirement System has.
3. Cleary, from the retirees, whom
4. we also represent, the retirees, because they are not the
5. ones who have the documents, but the Retirement System. And the
6. Retirement System had to vacate even its building. The Retirement System
7. is no longer in the building. It had to move twice from different
8. locations. First from the Minillas building and now to—the, from
9. the Retirement System building.

10. And we've been producing all the documents
11. possible that the Retirement System has been able to, has provided us.
12. But we recognize, and that's why we did it once we finished what
13. we had found and had found up to that point,
14. we produced all the information that we had in our
15. possession. And that's what we submitted last week.

16. ATTY. QUIÑONES: If I may, Your Honor—

17. ATTY. VICENTE: Harold Vicente, for the record. I believe that
18. what should be made clear is that no document has been withheld.
19. I mean, everything the Retirement System has found
20. related to this lawsuit, has been given to us. There are still some
21. documents that are still being digitized and will be produced in
22. the next few days. But everything, I mean, we haven't—

23. HON. JUDGE: But look, here's what I think.

24. ATTY. VICENTE: We haven't taken anything out of the boxes.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 9 of 69

1. HON. JUDGE: I haven't seen them, because I shouldn't,
2. at this stage, shouldn't be looking at evidence, except for
3. that which is accompanied in the motions for summary judgment
4. and the opposition. Because that's the discovery of evidence
5. that you are conducting.
6. But part of what we're going to do today is,
7. well, try to give a structure to the case.
8. Because, otherwise, we're going to have to appoint a
9. special master to sit with you every week. Every
10. week, because you know that, that it's, almost
11. impractical, right? It's impractical to go over that volume of documents
12. here one by one.
13. I figure that it must be purged. And for starters,
14. it is necessary to exactly define which are the disputes that
15. must be resolved. Because I think that within
16. that bundle of 30-something thousand documents there must be
17. some evidence that is not relevant to this case.
18. And, then, well, the idea is that we can, in fact, work
19. the case. And, and the documents are to prove, to prove the
20. parties' allegations. Because here, it will not win the one bringing the most
21. papers . That's not how a case is won. It's, well, whatever
22. is relevant and essential.
23. And, in fact, the court file already has extensive
24. documentary evidence and which has been repeated. And that I

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 10 of 69

1. even had to order its withdrawal from the court file. Because, look,

2. I have McKenzie's report I don't know how many times.

3. Unless it's been changed or modified each time. But, you

4. know it's a block of paper. So I have

5. many copies.

6. I think that you have to do that exercise

7. to be able, to be able to put the court in a position to decide.

8. Because if we don't, we're never going to finish.

9. ATTY. VICENTE: Yes, Your Honor. What I meant was

10. that we have produced everything. And before we are

11. the judges of what's relevant or not, we have given everything.

12. That's, that's what I meant.

13. There's no doubt that when in this case we'll, we'll present

14. the evidence that we understand that will be,

15. well, but included there, because we haven't

16. withheld absolutely nothing.

17. There may be documents that do not respond to

18. any of the requirements that they have requested or have

19. sent. There's no doubt—

20. ATTY. QUIÑONES: I would like—

21. ATTY. VICENTE: Excuse me. There's no doubt that it can happen,

22. that more documents have been produced than

23. requested, because we handed over everything. Everything that had

24. something to do with this action was handed over.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 11 of 69

1. One second, and excuse me. It's just that I have had this

2. toothache since Saturday and frankly it's, it's, it's ,it's

3. driving me crazy.

4. But, but the important thing is that all this, all this

5. documentation is in their possession, and, and, and we have no

6. problem with giving them time to examine and,

7. and evaluate it. I mean, we didn't, didn't want to keep

8. any document.

9. ATTY. QUIÑONES: Yes, Your Honor, I think we have

10. to take a step back and look at what has happened in the

11. discovery of evidence.

12. HON. JUDGE: Say your last name, the lady is asking

13. me.

14. ATTY. QUIÑONES: Attorney Roberto Quiñones Rivera.

15. HON. JUDGE: For defendant UBS.

16. ATTY. QUIÑONES: I think we have to take a step back,

17. because there are some key issues here that the

18. plaintiffs haven't addressed.

19. Attorney Vicente makes the representation that they have

20. produced the documents that, that his client gave him. But those

21. are documents that his client, for the most part, gave to

22. him even before, even before being notified with a

23. Request for Production of Documents.

24. So they may very well be the documents that your

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 12 of 69

1. client at some point understood are favorable to
2. the case and those are the documents given to him. And they
3. believe that with that they have complied with
4. the discovery of evidence in this case.
5. No written responses have been notified here to the
6. discovery of evidence, to the Request for Production
7. of Documents. It's been two and a half years, and there's still no
8. answer to those Request for Production. For the first time
9. produce documents that they had two and a half years ago,
10. last Thursday, in a completely useless format.
11. So I ask the court to consider the
12. motion to order the complete production of documents.
13. Order the responses to the discovery of evidence that is
14. notified; any objections which they may have had at one time
15. have been waived, of any kind. Two and a half years I
16. think that is enough time for the parties to have responded
17. and chose not to. They didn't even do it before
18. today's hearing.
19. I think that's a defiance of the court's orders to,
20. to conduct the discovery of evidence, that the court made
21. a statement to that effect in 2007, when the issue of the
22. motion to dismiss under the statute of limitations.
23. And at one point there was a request to bifurcate the
24. proceedings to address the discovery about statute of limitations

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 13 of 69

1. only. That was a request from the, the, the then
2. defendant Santander. The court ordered that the discovery
3. would not, would not be bifurcated. That the parties proceed
4. with all discovery of evidence in this case. That was
5. more than two years. It's the law of the case, in this case. And the defendants,
6. the plaintiffs have simply crossed their arms.

7. And they understand that by having scanned the documents that they
8. had two and a half years ago and deliver them which, again, are not
9. responsive documents to the Request for Production, they have already
10. complied with the discovery of evidence.

11. So, Your Honor, we request that you consider
12. our motion to compel the production of documents. The
13. objections that they may have had have been waived, and that
14. today the discovery of evidence be structured.

15. Regarding the production, I would like to mention,
16. mention the following. Most of the documents that
17. were produced have a marking that reads "FOIA", Freedom
18. of Information Act. Those documents apparently
19. were produced in response to a requirement that perhaps
20. had been made by a Federal Agency at some point. And that's
21. what is being produced. Eighty percent or more of the
22. documents have that marking. What we find extremely curious.

23. At this point we don't know how those documents
24. were gathered, who did it, exactly when was it done.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 14 of 69

1. We don't know when a document begins and ends and...
2. the other begins, ends a document and begins another..
3. It is a completely useless production. So coming here
4. to say, "we have produced everything", we don't know what
5. they are referring to, because there is not even a written answer.

6. ATTY. ANDRÉU: May I, Judge?

7. HON. JUDGE: Go ahead.

8. ATTY. ANDRÉU: I am attorney Andréu; In this case
9. I represent the retirees plaintiffs, in their individual
10. capacity.

11. As you know, Judge, I only recently joined the case.
12. But I've been examining the file for some time and
13. examining the procedural status of this case. And, perhaps,
14. with my fresh approach to the case, I may suggest
15. the following.

16. And so, Your Honor, I was able to see the
17. documents that have been produced in this case. I was able to
18. see them quite in detail. And the first thing that caught my
19. attention, Your Honor, is the same as now brother counsel
20. is saying, the plaintiffs have been saying for quite
21. some time. In fact, it's part of what the
22. plaintiffs have included in the Joint Case Management
23. Report. And what to the previous legal representation for
24. the defendants, O'Neill & Borges, the plaintiffs were

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 15 of 69

1. requiring to them.

2. Now I see that brother counsel is complaining that he's been given
3. a pile of documents, when actually the plaintiffs,
4. as the report shows, I'm not making anything up, and from the letter,
5. have been telling them the same thing. They have been saying,
6. "They gave me a pile of documents; you haven't classified them; you
7. haven't, and you haven't. You threw them at me".

8. The thing is, Your Honor, this case certainly
9. is very complex in terms of the number of
10. documents it has, right? And, and it's difficult to
11. understand what is wanted by both sides. Certainly, the
12. plaintiffs, understand that the relevant documents are those
13. included in their, in their Motion for Summary Judgment. But,
14. and as for the retirees, those are the most important
15. documents, right?

16. But certainly, Your Honor, what I propose is
17. the following. I think what the parties should do, which is the exercise
18. that I've been trying to do, but I haven't had time,
19. I suggest granting a term to brother counsel, to the plaintiffs,
20. so they can have the time to look at the documents,
21. and determine what additional documents. Because,
22. after all, the defendants are no strangers to what
23. has happened here. The defendant has been in these
24. transactions from the beginning. And must have the documents.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 16 of 69

1. But just like the plaintiffs, they have the
2. documents, those 30-something thousand. Some are from
3. the old boxes. But the majority are documents that were
4. provided a few days ago for the reason stated by
5. attorney Hernández Denton. And it's after Hurricane
6. María, the Ass— the Ret— the Retirement Association has had even to
7. clo— the Retirement System hasn't even been able to use its headquarters.

8. And, and, and had those problems. And, therefore, well, and
9. as a government entity, there have been those
10. problems in getting. There are other additional documents
11. that by noon today will be ready.

12. ATTY. VICENTE: One thousand five hundred and forty-five pages.

13. ATTY. ANDRÉU: One thousand five hundred and forty-five
14. additional pages, which for the day, which for noon today
15. or today during the day, will be digitized.

16. The reality is, Your Honor, that the, as attorney
17. Vicente said, we have handed over everything here. The plaintiffs
18. have not kept anything. It has been given as an act of
19. good faith, here's everything the Retirement System has.
20. Obviously, the retirees have no documents.

21. But here's everything the Retirement System has,
22. so there's no problem and they can be seen. Our position,
23. Your Honor, we have no problem with giving a
24. reasonable term for them to go over the documents

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 17 of 69

1. calmly, can determine what additional documents
2. they believe may exist.
3. We understand that with the production that we'll
4. provide today, the, they are being given everything
5. that the System has about this. But again, without keeping, at
6. least the attorneys haven't, haven't kept anything. No,
7. there's nothing, not even— we haven't even made a confidentiality log.
8. We haven't even determined anything. Simply everything that
9. has to do with these transactions has been handed over. And it's
10. going to be completed this afternoon.
11. My point is, to give them that term, a reasonable
12. term; what brothers counsel believe to be prudent. We,
13. in turn, we need to finish going over, because really we are,
14. we're in the same position. We were given a
15. pile of documents. We've been trying to, to, to purge
16. them. But it hasn't been done either. To the point that it is in
17. the, it's the objection that we raised in the Joint Report.
18. And that once brothers counsel examine it and we
19. are able to finish with ours, we— we'll hold a meeting
20. to finish, de— determine what other thing, if any,
21. well, they have and we have. Because there are documents
22. UBS, we understand that UBS must produce.
23. And from there, Your Honor, grant them a term. Because
24. as you very well said, there's a Motion for Summary Judgment

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 18 of 69

1. submitted. Brothers counsel presented, the
2. defendants filed an opposition, included a series of
3. documents and some sworn statements. And regarding one
4. or two or three, no more than two or three findings of
5. fact, said that it had to discover additional
6. evidence. That was the objection. And I can tell you, in only two
7. or three findings of fact.

8. Well, then, after they get a chance to
9. go over the documents, be given another reasonable term
10. also to finish the opposition to the Motion for
11. Summary Judgment and we reply. So this matter be
12. submitted to the Court. That would be my, my position in trying to
13. find a halfway point, right, and newly arrived.

14. It seems to me that, that more than just appointing a person,
15. I think we have the ability to sit down and, and determine.
16. Again, they are not new to the case. They can't say that
17. now they don't have the documents. They have been—UBS is
18. part of these transactions from the beginning. And have,
19. after all, have the evidence or at least have access,
20. because it's in their possession to — the evidence needed to
21. be able to oppose to the Motion for Summary Judgment. And for the three,
22. for the three findings of fact that they say that they have to
23. make discovery and that they haven't been allowed to do
24. the discovery.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 19 of 69

1. Grant them a term. That I think may be 90,
2. 120 days. Have them do that analysis of those documents that we
3. have handed over. And, and another term for them to oppose. And from there,
4. well, hold that intermediate meeting, and we can come to, an understanding.

5. But certainly the Retirement System today, which is what
6. brothers counsel have informed me and what we have, in the meetings I
7. have attended to, they are being given everything. That's why there are so
8. many, because it's all the Retirement has.

9. ATTY. QUIÑONES: Your Honor, I would like, a clarification
10. from counsel. If he represents the Retirement System or the
11. individual plaintiffs. Because he's making a representation on
12. behalf, representations on behalf of the Retirement System. But I
13. believed that his appearance was on behalf of the individual
14. plaintiffs.

15. Because if he is, if those are his clients, well then, he's
16. repeating what the other brothers counsel said. He's not
17. bringing anything that hasn't been raised before. And he has no
18. personal knowledge of what he's arguing.

19. As for the, production of, documents that there
20. was and the allegation that there were documents that, that, that
21. have not been found because of the destruction of, hurri—
22. destruction of servers by Hurricane María, Your Honor,
23. in federal court proceedings, where the Oversight

24. Board is representing the interests of the

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 20 of 69

1. Retirement System, documents are being produced and
2. searches are being made.
3. And we haven't found a single communication where
4. we have been copied, where it is mentioned that the servers
5. were destroyed due to Hurricane Maria. Even,
6. in one of our writings, we submitted an electronic
7. communication from counsel for AAFAF, in which they report that
8. they have been recently searching for documents,
9. including electronic documents from servers prior to
10. Hurricane María. And, and there's no mention that, that there's
11. any obstacle or impediment due to destruction
12. of servers to, to—due to, to Hurricane María.
13. And I'd like to take this, this, point to mention
14. that we have been in communication with counsel for the
15. Oversight Board, informed us that, in turn,
16. have been in communication with counsel for the
17. Plaintiffs in this case regarding the proceedings in this case.
18. And that the intention of the Board's lawyers is to lift the
19. stay of the proceedings regarding the Retirement
20. System in the Federal court, to allow the filing of
21. UBS' counterclaim in this case. And then reinstall the
22. stay of the proceedings, and request the stay of the
23. proceedings in this case. We bring it to you only
24. for the Court's information.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 21 of 69

1. HON. JUDGE: That's not before this Court's consideration.

2. ATTY. QUIÑONES: Understood, Your Honor.

3. Only—

4. HON. JUDGE: That's not what's happening here.

5. ATTY. QUIÑONES: We want to be transparent about
6. what, what's happening.

7. HON. JUDGE: I can't solve what I don't have

8. before this Court's consideration. Therefore—

9. ATTY. QUIÑONES: It's informative, Your Honor. But

10. I do, do mention it because we have inspected the

11. files of the proceedings in the Federal Court and we

12. know that documents are being produced.

13. So to say that everything that exists,

14. there's no— no—

15. HON. JUDGE: In other words, what you're telling me is that

16. what was produced yesterday is just what was produced— that, that

17. Retirement produced in the Federal Court?

18. ATTY. QUIÑONES: No. That other documents are

19. being produced that here we are being told that are not

20. available.

21. MALE VOICES: (Unintelligible).

22. ATTY. QUIÑONES: That other documents are

23. being produced, that here—

24. HON. JUDGE: Counsel—

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CERTIFIED TRANSLATION:
TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 22 of 69

1. ATTY. ANDRÉU: Which are the other documents,
2. brother counsel?

3. ATTY. QUIÑONES: The documents we've been told—

4. MALE VOICES: (Unintelligible).

5. HON. JUDGE: Counsel, no. Not this way.

6. ATTY. QUIÑONES: There's a representation here that
7. the doc— there was representation at a meeting in April
8. of this year that the servers of the Retirement System had
9. been totally destroyed.

10. HON. JUDGE: Yes. And you're telling me that this hasn't
11. been brought to the Federal Court.

12. ATTY. QUIÑONES: They haven't brought and—

13. HON. JUDGE: This statement. And they have taken
14. documents. And I ask, and counsel for Retirement here today
15. have stated here this morning that they have handed over all
16. documents they received from, from the Retirement System.

17. ATTY. QUIÑONES: More than two and a half years ago.

18. HON. JUDGE: And I make a question— and I ask you
19. if they're the same ones from the Federal Court. If you had the
20. chance yesterday to check the 30-something thousand documents
21. vis a vis what's in the Federal Court. Because it's not
22. incompatible. So they didn't raise it there? Well, there may be
23. 30 thousand documents.

24. ATTY. QUIÑONES: It's just that electronic documents

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 23 of 69

1. are being produced there that haven't, haven't been produced here.
2. No electronic documents have been produced here. In other
3. words, documents, emails, from computer servers.
4. We haven't seen that in the production. What we have seen —
5. HON. JUDGE: That is, there are no emails in the disc.
6. ATTY. QUIÑONES: There are some, there are, there are some copies.
7. HON. JUDGE: In the disc they gave you yesterday with the
8. 30-something documents there are no emails?
9. ATTY. QUIÑONES: There are emails, but printed copies
10. of the emails. Not as a result of an electronic
11. search, the electronic file that comes directly
12. from the computer. Which is the format in which nowadays
13. electronic documents are produced. They're emails that may have
14. been printed, stored in a physical file.
15. HON. JUDGE: That didn't come out of the computer.
16. ATTY. QUIÑONES: Didn't come out of the computer. And in the
17. PROMESA proceedings, there are some communications that
18. indicate that that searches are being made in electronic
19. servers for dates prior to Hurricane María. And here they're
20. telling us that the servers were destroyed. They told us
21. that in April of this year. They represented to us that there would
22. be an affidavit certifying that.
23. Then they told us, "Well, not all were destroyed.
24. Some were destroyed. But we'll give you an affidavit."

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 24 of 69

1. We don't have the affidavit yet. It's been seven months,
2. been seven months, it shouldn't take so long to prepare
3. an affidavit explaining it. I'm sure it's been
4. more, more than two years since the hurricane.

5. HON. JUDGE: Okay, well, look. Let's do something.
6. The Retirement System has 20 days to produce a sworn
7. statement saying that that is what they have, like they
8. have stated here, well, of the Retirement System. Certifying
9. that the evidence provided to the defendants is
10. all the evidence that they have. And we save the situation
11. like that.

12. ATTY. QUIÑONES: We request, Your
13. Honor, and we have one here, a Notice of Deposition to take
14. the deposition of the person who gathered the documents that
15. were produced last Thursday. In order to exactly understand
16. what was done, because it is —

17. HON. JUDGE: Ah well, then there's no need
18. for the sworn statement.

19. ATTY. QUIÑONES: Well, is that they are—

20. HON. JUDGE: Because you'll take the—

21. ATTY. QUIÑONES: There are two, two issues. Excuse me,
22. Your Honor.

23. HON. JUDGE: You will take a deposition under oath.

24. ATTY. QUIÑONES: Yes, but this is regarding the

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 25 of 69

1. documents that were produced Thursday.
2.
3. HON. JUDGE: Exactly.
4.
5. ATTY. QUIÑONES: There's a separate subject, which is the, the
6. destruction of the servers. And that subject we can also take
7. a deposition of the person with knowledge of that subject, if identified
8. by brothers counsel. I figure they can tell us who is
9. the person with whom they have been talking about
10. the destruction and evacuation.

11. ATTY. HERNÁNDEZ: Your Honor, let me try to clarify. The
12. PROMESA proceeding, of the Retirement System, is a proceeding
13. much more extensive than the one at hand. There's discussion there —
14. there the Retirement System, the Board, the Oversight Board submits it
15. to bankruptcy proceedings. And the information that may be
16. produced over there is not necessarily the same as ours
17. here— the same as the one in this case.

18. This case is a case of negligence that our —
19. the plaintiffs are alleging that UBS has committed.

20. Initially, excuse me, Federico Hernández Denton.

21. We're claiming that the defendants
22. incurred in negligence and a breach of contract in the
23. process of advising and in the triple role — that ocup— by UBS.
24. And the documents relating to this case are about that. Whatever the
Retirement or AAFAP may be submitting in the System's bankruptcy ,
of the Retirement, should encompass much more than this.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 26 of 69

1. We reiterate that we have submitted what
2. Retirement has, has given us and we have handed over
3. everything we have. And our intention in handing it over, last,
4. last week, precisely— we have— we have not
5. seated. And I believe that what brother counsel Andréu is
6. recommending is very reasonable. We are in the best
7. disposition to seat and dialogue with the other party
8. in regard to— to what they have, they first have to assess
9. what they have.

10. Making allegations here that we have submitted
11. one thing and submitting another over there, without the
12. defendants herein be able to specify which documents were submitted
13. there and which— and what are the differences between those
14. submitted here, it really seems to me—

15. HON. JUDGE: I think we can solve this.
16. Take the set of re—the request for evidence and
17. answer it. Answer it, “Look, in this disc, number one,
18. you asked for this, well I handed over this. Number two,
19. this does not exist. I don’t have it. It was lost”. But it must be answered.
20. I think that's what they're asking for.

21. ATTY. QUIÑONES: Yes, correct.

22. ATTY. HERNÁNDEZ: That, that was what—

23. HON. JUDGE: That can't be, that can't be that

24. you hand over a disc, “Here’s everything”.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 27 of 69

1. ATTY. HERNÁNDEZ: Yes, Your Honor, we are
2. doing the same thing they did to us. They, at a
3. meeting we had—
4. MALE VOICES: (Unintelligible).
5. ATTY. QUIÑONES: No, that's not true. Not true.
6. HON. JUDGE: Fine, but—
7. ATTY. HERNÁNDEZ: Counsel, you just came into
8. the case.
9. ATTY. QUIÑONES: And I read the entire file before
10. this hearing.
11. HON. JUDGE: Counsel, counsel, listen. The fact that one
12. party did it wrong, doesn't mean it's right. Both have
13. to do it in the same way. Both parties must answer, "Well
14. look, here's the request. Number one, well that it's— I don't know how
15. you will identify it— it's in the disc, in the, paragraph so-and-so of the disc.
16. Number two is in paragraph so, so, so, so, so". That
17. answer, the same thing. The same goes for everybody else.
18. Because otherwise, we're never going to be able to finish this.
19. Now, another thing that attorney Hernández Denton
20. said. This case, well, the controversy in this— that I have
21. to resolve is not the same as the one in the Federal Court. And what
22. they do there, well, fine and dandy. Whatever they do there, that is,
23. right— I don't have— my jurisdiction doesn't extend that far. So in
24. this case, the evidence that is going to be sought is the evidence

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 28 of 69

1. pertaining to the allegations about the nature of the transaction
2. between UBS and the Retirement System.
3. Look, what's at issue here is which
4. representations, if any, did UBS make to the Retirement System
5. when it sold, marketed, devise or did not devise the sale of these bonds.
6. That's a controversy in this case. So that's the evidence that
7. I need.

8. ATTY. ANDRÉU: Your Honor, about that, if I may. Perhaps
9. we could simplify this issue now, right now,
10. about the controversy, about that controversy. Because you see that
11. is precisely what is submitted in a Motion for Summary
12. Judgment in which the plaintiffs, as counsel Hernández
13. Denton said, allege that there's been a breach of the
14. fiduciary duty by— in the advice provided by UBS, which
15. they deny. No— We're not going to get into that now. Those are
16. allegations.

17. And, therefore, what is currently submitted in
18. Summary Judgment and what is imminent that brothers counsel
19. answer so as to comply, because they are the ones who
20. have said that they still don't have enough evidence to
21. oppose to some of the findings of fact proposed
22. as undisputed, then remove, limit, sorry
23. the discovery of evidence at this stage
24. just the part that has to do with that particular issue.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 29 of 69

1. With the issue that has to do with liability, so to
2. speak. Because if there was no liability and you
3. determine that there wasn't, well, there's no need to address
4. the other parts.
5. And because, what happens. Many of the documents that I
6. have seen that were sought in the Request for Documents
7. address the issue of the damages caused to the
8. Retirement System. And the part of the damages caused to the Retirement
9. System, at least at this time, is not imminent conducting
10. discovery in a case so complex
11. in terms of documents, not the legal disputes, but
12. in terms of documents.

13. And I also propose, to facilitate this, to then
14. limit this part of the documents to— and of request,
15. to the part that has to do with what is pending to be
16. resolved in our Motion for Summary Judgment. So it can be
17. a bit easier. They have the chance, we— that request
18. can be answered faster by both parties and we
19. can move ahead with the proceedings.

20. That's my proposal. And so both parties are granted a term
21. to delimit those for that, to meet. And, then,
22. a term for them to answer and continue from there.

23. ATTY. HERNÁNDEZ: I want to add, Your Honor, if I
24. may, Federico Hernández Denton. We are

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 30 of 69

1. willing, if we are granted a term of 20 or 30

2. days, to answer the same. We answer the request that

3. they sent us and, and then we specify what has to

4. do with us. Eh, in the— we answer the request

5. that they, they sent us.

6. ATTY. ANDRÉU: And the part of liability gets easier.

7. ATTY. QUIÑONES: Your Honor, the requests that

8. we have made addressed the subject of liability, not the subject of

9. damages. Because the plaintiff's theory is closely — regarding

10. liability, is closely intertwined with the

11. subject of the alleged damages of the Retirement System

12. Because the argument of liability is that the

13. revenues of the bond issuances didn't generate— didn't

14. have the financial result over the next years,

15. obviously to the issuances that were supposedly

16. represented. That no such representation was ever made.

17. But, therefore, we need discovery not only

18. as for the communications that took place before, during, and

19. after about the issuances themselves, but how did the

20. Retirement System invested the revenues of those issuances to

21. see if it's really true, as a matter of liability,

22. not damages, of liability, that those issuances didn't have

23. the results that were supposedly represented.

24. Because if we cut the story by the end of the third issuance

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page **31** of **69**

1. of bonds, no, that's not, that's not the plaintiffs' story.
2. The plaintiffs' story regarding liability goes on
3. through the following years, when supposedly
4. what was earned, the billions earned from those
5. issuances did not have the financial results that were
6. represented. And that's where the claim of responsibility arises.

7. So they cannot pretend to segregate the issue from what
8. occurred in the, during the issuances of 2008, from what took place
9. afterwards. That's why we need the Discovery of
10. evidence. It's not a question of damages. Is in order to respond to
11. the arguments made in the Motion for Summary Judgment that
12. supposedly there was a, there was a performance, not
13. consistent with the performance that was represented.

14. So we need that discovery to be made
15. completely. And as I said before, there are some, some
16. statements made by the Court that the discovery in this
17. case wouldn't be bifurcated.

18. HON. JUDGE: Basically what— let's see if I understand it all. What
19. counsel is indicating is that in order to determine if there were
20. inadequate representations that breached the fiduciary
21. duty, which led to, UBS, which led to the debacle of the
22. Retirement System, well, they have to see the numbers.

23. ATTY. QUIÑONES: Sure. And that information—

24. HON. JUDGE: It can't just be a

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 32 of 69

1. discovery of what was represented to me, what was
2. not represented to me, because it needs to be
3. seen the results of those representations. It seems to me that
4. is what brother counsel for, for UBS is saying. That there's
5. no way— well I represented to them that if they did this, that
6. would be the result. Well, they have to see which were the results.

7. ATTY. QUIÑONES: They allege that UBS Trust made some
8. recommendations as to how that money should be invested. Well,
9. we want to see how it was actually invested. How has it been
10. invested.

11. MALE VOICES: (Unintelligible).

12. ATTY. HERNÁNDEZ: We're talking (unintelligible).

13. ATTY. QUIÑONES: To this day, how has this money
14. been invested. We have to see those financial
15. statements that have not been produced.

16. HON. JUDGE: No. What is being alleged is that, in
17. light of UBS' advice and representations made to the
18. Retirement System, the Retirement System took on the
19. sale of some bonds that were to generate a return that didn't,
20. didn't generate at all what was expected, which was a positive
21. arbitrage. Those are the allegations.

22. But I also understand what the defendants are
23. saying. It is saying, "Well, let me see what
24. were the results. Whether or not there was that positive arbitrage".

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 33 of 69

1. ATTY. QUIÑONES: And, indeed, there are financial state—

2. HON. JUDGE: And that's what he's doing, I mean,

3. requesting the discovery.

4. ATTY. ANDRÉU: Up to here—

5. ATTY. QUIÑONES: Excuse me, brother counsel. As for the

6. topic of how investments have behaved and what is the

7. financial condition of the Retirement System, we believe that the

8. PROMESA proceedings— and we bring it in as a matter of

9. comparison, Your Honor— counsel for, for the Retirement

10. System, through the Oversight Board in those

11. proceedings are— we believe that they have produced or are

12. in the process of producing that information that has not been

13. produced here. That's why we bring up the difference.

14. HON. JUDGE: But, look, look. I can't, I can't give brothers

15. counsel for the plaintiffs the guidelines on how to handle

16. their case.

17. ATTY. QUIÑONES: Well, they have to comply with the—

18. HON. JUDGE: If they haven't brought it, they haven't brought it. Well

19. I have to resolve with what they bring, you see? With what they

20. bring. But I have to set it within the boundaries of

21. a controversy. And I think that's the controversy.

22. But I also understand what the defendants are telling

23. me, "Well, you have to prove to me that no such positive arbitrage

24. took place". And that evidence, well, are the numbers.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 34 of 69

1. ATTY. QUIÑONES: And we want to see if, want to see

2. if the Retirement System followed UBS Trust's recommendations.

3. HON. JUDGE: Exactly. If it followed the recommendations because

4. if it followed the recommendations, then, according to UBS, then it should

5. have had a positive arbitrage.

6. ATTY. QUIÑONES: Correct. If the market has generated— there's

7. been an extraordinary bull market since— those issuances were

8. made. So we don't understand the allegation made by the party,

9. plaintiffs. But we must see if, in fact, it invested

10. the revenues in the way that it was, it was recommended.

11. And that information is not about damages. They are refusing to

12. produce that documentation alleging that is about damages. And is

13. part of their own theory of liability.

14. ATTY. PUJOLS: Your Honor, excuse me. Francisco

15. Pujols, for the plaintiffs.

16. Your Honor, indeed, the controversy has

17. two parts. The first is to prove civil liability for damages

18. due to negligence. And the other is to determine the

19. amount of the damages. I respectfully submit that the

20. first part don't necessarily have to quantify how much

21. the damages were to establish that there were damages.

22. HON. JUDGE: We are clear.

23. ATTY. PUJOLS: The representations made by UBS, and

24. are crystal clear, despite what brother counsel

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 35 of 69

1. Quiñones alleges, UBS told to the System, "We'll issue 3 billion
2. dollars in bonds. In fact, we'll issue more,
3. if possible. And those bonds will generate a positive arbitrage
4. and improve the System's funded ratio". And Judge—

5. HON. JUDGE: Ok, stop right there, stop right there.

6. ATTY. PUJOLS: That—

7. HON. JUDGE: The evidence.

8. ATTY. PUJOLS: The evidence that we have is enough
9. for that.

10. HON. JUDGE: What is the evidence to show whether or not
11. there was a positive arbitrage?

12. ATTY. PUJOLS: The evidence to show if there was
13. a positive arbitrage are the System's own financial
14. statements, showing the interest income and the
15. interest expenses.

16. HON. JUDGE: And has it been handed over?

17. ATTY. PUJOLS: Is included in the System's financial
18. statements, which is public information.

19. HON. JUDGE: Has this documentation been hand over to them?

20. ATTY. PUJOLS: I understand, I understand that it was.

21. HON. JUDGE: The financial statements?

22. ATTY. QUIÑONES: We haven't seen them in the documents
23. produced by the plaintiffs

24. HON. JUDGE: They haven't seen them in the documents produced.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 36 of 69

1. ATTY. PUJOLS: Perhaps they are not—
2. HON. JUDGE: because those aren't, well, those aren't
3. the damages.
4. ATTY. PUJOS: Precisely, those aren't the damages, and
5. we have no problem with producing that to the extent
6. they exist.
7. HON. JUDGE: Therefore, were they produced
8. or not?
9. ATTY. PUJOLS: Your Honor, I honestly haven't
10. reviewed the 30-something thousand pages.
11. HON. JUDGE: Well, that has to be produced.
12. ATTY. PUJOLS: All right. In some —
13. HON. JUDGE: Excuse me?
14. ATTY. ANDRÉU: I'm guessing there are some in there.
15. ATTY. PUJOLS: That's precisely why we've
16. asked for some time.
17. ATTY. ANDRÉU: (Unintelligible).
18. ATTY. PUJOLS: If something is missing, they can say so in the
19. time left. Look at what we've produced. If something is missing, they can
20. tell us and we'll gladly produce it. In fact, this afternoon
21. we'll produce 1,545 more pages.
22. HON. JUDGE: Counsel, the thing is that it doesn't, doesn't work
23. like that. The rules don't work like that. They sent a
24. Production of Documents and told you, "I want this, this,

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 37 of 69

1. this", right? —
2. ATTY. PUJOLS: Yes.
3. HON. JUDGE: You have to answer it.
4. ATTY. PUJOLS: Of course.
5. HON. JUDGE: "I'm sending you this, this, this".
6. ATTY. PUJOLS: As— Yes, Your Honor, as we submitted
7. a prod—
8. HON. JUDGE: As well.
9. ATTY. PUJOLS: They have to do the same.
10. HON. JUDGE: I said it earlier. The defendants have to do
11. the same. The same exercise.
12. ATTY. PUJOLS: We have no, have no objection
13. that this exercise be carried out. We are clear that this exercise should be
14. carried out. All brother counsel Andreu said was that maybe we
15. could carry out that exercise first in the part corresponding to,
16. liability, whether or not there was negligence—
17. HON. JUDGE: Exactly—
18. ATTY. PUJOLS: —before addressing the amount of damages.
19. HON. JUDGE: But look, you told me, you have told
20. me, "The determination of whether or not there was a positive
21. arbitrage can be seen from the financial statements".
22. ATTY. PUJOLS: Yes.
23. HON. JUDGE: I asked, "Are the financial statements there,
24. were they handed over?"

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 38 of 69

1. ATTY. PUJOLS: I personally don't know the answer.
2. HON. JUDGE: And brother counsel for the defendants
3. have said, "No, there are no financial statements". Well that
4. evidence is certainly essential.
5. ATTY. PUJOLS: Your Honor, agreed. I personally don't know
6. if the financial statements are included in the 30-something thousand
7. documents. I have no personal knowledge.
8. HON. JUDGE: Exactly.
9. ATTY. PUJOLS: But if—
10. HON. JUDGE: But then, that exercise of the
11. 30-something thousand documents must be carried out.
12. ATTY. PUJOLS: Must be, must be carried out. But aside from that,
13. it's clearly established in the Conway MacKenzie report,
14. that indeed it didn't happen—
15. ATTY. ANDRÉU: That's part
16. ATTY. PUJOLS: —the positive arbitrage. And that's part of the
17. production that, as you have well alleged, you even have
18. about eight copies of that already.
19. HON. JUDGE: Fine.
20. ATTY. PUJOLS: It is said and—
21. HON. JUDGE: But they want to see the statements.
22. ATTY. PUJOLS: Agreed. No problem.
23. ATTY. ANDRÉU: In fact, in the binders that the, that UBS
24. sent to the plaintiffs, I personally saw those

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 39 of 69

1. financial statements. And were part of the analysis made by
2. MacKenzie.
3. HON. JUDGE: Are they there?
4. ATTY. QUIÑONES: No, but the analysis— we're talking about
5. the financial statements from 2008 onward. That hasn't been produced.
6. We want to see how were the revenues from the bonds invested. That hasn't
7. been produced and we want to take the deposition of the persons in charge
8. of making those investments. To determine why did they make the
9. decisions that they made. That hasn't happened. Not that discovery.
10. ATTY. ANDRÉU: There are 2006, 2007 y 2008.
11. ATTY. QUIÑONES: And all that, and all that, Your Honor—
12. HON. JUDGE: Two thousand six, 2007, and 2008. The last bond
13. issuance was in June 2006.
14. ATTY. QUIÑONES: Two thousand eight.
15. ATTY. ANDRÉU: Two thousand eight.
16. ATTY. QUIÑONES: Two thousand eight. Those three. Precise—
17. HON. JUDGE: Ah, sorry, June 26, 2008.
18. ATTY. QUIÑONES: But precisely what we need is
19. the subsequent. To see how they were invested. What were the results
20. of those, of those investments. That's the information that
21. we need.
22. HON. JUDGE: The results of the investments.
23. ATTY. PUJOLS: The results of the investments, down to the last cent,
24. of every investment made as of today, that hasn't been

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 40 of 69

1. submitted and I haven't seen it.

2. We are clear that there were some investments that aren't

3. producing what they should have produced and that's shown in

4. the System's financial statements, that clearly the interest expenses

5. exceed the interest income.

6. HON. JUDGE: But does the defendants have that,

7. counsel?

8. ATTY. PUJOLS: They have financial statements up to,

9. which are included in the Conway MacKenzie report.

10. ATTY. QUIÑONES: Two thousand eight is prior to the

11. production.

12. HON. JUDGE: OK.

13. ATTY. PUJOLS: If they want additional ones, I don't, again, I don't

14. have personal knowledge that they'd be in the 30-something documents.

15. I am sure that they can be produced because the System does

16. have them—

17. HON. JUDGE: OK.

18. ATTY. PUJOLS: And if some are missing, after carrying out the

19. exercise, we'll gladly produce it.

20. HON. JUDGE: Let's delimit the date, date of the

21. financial statements.

22. ATTY. QUIÑONES: Up to now.

23. HON. JUDGE: Because there are up to 2008.

24. ATTY. QUIÑONES: Up to now, counsel for, for the—

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 41 of 69

1. ATTY. ANDRÉU: Up to now?
2. HON. JUDGE: Well—
3. ATTY. QUIÑONES: Up to now.
4. HON. JUDGE: —I'm saying what he's requesting.
5. That is, what he is requesting. He is requesting they'd be up
6. to now.
7. ATTY. PUJOLS: If they'd be not audited, the last internal,
8. statements that the Retirement System has can be
9. produced. But audited statements up to now, there aren't any.
10. ATTY. QUIÑONES: Well, then not audited, then
11. up to now. Audited—
12. HON. JUDGE: Not audited up to now.
13. ATTY. QUIÑONES: No, excuse me, Your, Your Honor. Audited
14. for the years that are audited. And those that aren't
15. audited yet, then not audited.
16. HON. JUDGE: After 2008, all audited statements,
17. because they have the previous ones.
18. ATTY. PUJOLS: Whatever there is.
19. HON. JUDGE: OK, after 2008, every audited [financial]
20. statement. Every statement. And after 2008, every statement,
21. even if not audited.
22. ATTY. PUJOLS: If I may.
23. HON. JUDGE: In other words, they are requesting
24. every audited there is from 2008 plus each up to now.

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CERTIFIED TRANSLATION:
TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 42 of 69

1. ATTY. PUJOLS: Without implying—
2. ATTY. QUIÑONES: And with enough details. Excuse
3. me, counsel—
4. HON. JUDGE: Well—
5. ATTY. QUIÑONES: —to, to clarify. And with enough details
6. to see which investments were made. Because if they are
7. statements that are flying at 35,000 feet and don't have
8. that detail, well then, we won't have the information that
9. we need to explore the argument that —
10. HON. JUDGE: Well, it has to be the ones that there are.
11. ATTY. QUIÑONES: Well, but we need the
12. information showing which were the investments.
13. HON. JUDGE: Exactly, the ones that there are.
14. ATTY. PUJOLS: Your Honor, —
15. HON. JUDGE: I am saying everything that there is.
16. ATTY. PUJOLS: —brother counsel is requesting a—
17. HON. JUDGE: That they're not going to produce them now.
18. They're not going make them.
19. ATTY. PUJOLS: —a logbook. He is requesting a logbook of
20. investments, not a financial statement.
21. ATTY. QUIÑONES: But that's the plaintiffs'
22. argument.
23. ATTY. PUJOLS: Excuse me.
24. HON. JUDGE: But—

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 43 of 69

1. ATTY. PUJOLS: Excuse me. It can be established—

2. HON. JUDGE: —listen, please. Listen. You must

3. listen to each other. Go on.

4. ATTY. PUJOLS: Yes. It can be established whether or not there was

5. positive arbitrage with the financial statements, even though they

6. contain general information. If we were to go then

7. to specific details, already in the section of the, of the part—

8. computation of damages, well, a more accurate calculation

9. will have to be made.

10. But in order to having, to determine whether there was

11. liability, the financial statements are enough to

12. determine that, indeed, the System had revenues for

13. and dividends or interests in its investments lower than the expense

14. it had by interest in the bonds.

15. And that's what the general financial statements are for.

16. And I understand that they should be the ones that are audited,

17. to the extent that there are, from 2008 onward. And to the

18. extent that the not audited, for those

19. periods not covered by the audited, will be

20. not audited.

21. ATTY. QUIÑONES: May I, Your Honor? Maybe

22. the plaintiffs had the idea that they could file a

23. case alleging more than 800 million dollars in losses.

24. And then simply produce financial statements and the

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 44 of 69

1. case is over. It's not like that.

2. They have outlined a specific theory as to

3. liability in terms of the performance of the revenues from

4. bonds issued in 2008, OK? They are alleging that

5. such revenues later didn't generate the return that purportedly

6. had been represented to them. So, we have to see, then,

7. how were those revenues invested. We need enough

8. information to determine how were those revenues invested.

9. Financial statements that may perhaps have a page of assets

10. and the—

11. HON. JUDGE: But you haven't seen them.

12. ATTY. QUIÑONES: That doesn't, that doesn't answer our question.

13. HON. JUDGE: You have to wait. You haven't seen them.

14. ATTY. QUIÑONES: Well—

15. HON. JUDGE: You have to wait.

16. ATTY. QUIÑONES: My point is—

17. HON. JUDGE: Or have you seen them? You haven't seen them.

18. ATTY. QUIÑONES: My point is, Your Honor, if I may. My point

19. is that eventually what we need to see is exactly

20. how the revenues from the issuances were invested.

21. HON. JUDGE: OK, OK.

22. ATTY. QUIÑONES: And we need that—

23. HON. JUDGE: I understand. What I believe he's saying—

24. ATTY. PUJOLS: I agree—

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 45 of 69

1. HON. JUDGE: —right, is that UBS, if UBS gave some
2. recommendations on how to invest the revenues in order
3. to have a positive arbitrage, well, I want to know, I, UBS,
4. want to know if they followed my recommendation on putting the money
5. where they had, where I had suggested, I recommended to them.

6. ATTY. PUJOLS: Look, Your Honor, sorry to
7. interrupt. UBS—

8. HON. JUDGE: Is it or isn't it?

9. ATTY. PUJOLS: —UBS recommended—

10. ATTY. QUIÑONES: Yes, exactly. That's one of the matters,
11. Your Honor. Because we'll also go to—

12. HON. JUDGE: OK.

13. ATTY. QUIÑONES: —that arises from the premise that, indeed,
14. the recommendations that brothers counsel allege were
15. given by UBS, not by Merrill Lynch. Because counsel
16. made a statement about some alleged representations
17. of a, of a positive arbitrage. That wasn't made by
18. UBS. That was made by Merrill Lynch in 2006-2007.

19. HON. JUDGE: That's for me to decide —

20. ATTY. QUIÑONES: But we need—

21. HON. JUDGE: —with the evidence I receive.

22. ATTY. QUIÑONES: But, my point is, Your Honor, there
23. are other issues. There are other issues in this case for which we want to
24. carry out discovery as well. Because we neither have, right,

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 46 of 69

1. to simply accept the theory of the plaintiffs.

2. We want to make a discovery about the minutes as well,

3. the electronic communications and the entire system.

4. HON. JUDGE: Exactly.

5. ATTY. PUJOLS: We're not opposed to that.

6. HON. JUDGE: But I think everyone agrees

7. with that. And counsel Andréu said that he had no objection

8. in conducting discovery about, well, this, those

9. documents that were handed over to them. Specifically, that it is asserted in the

10. opposition. The minutes, which are minutes that, that, well, couldn't

11. be authenticated, that they want, well, they want to know.

12. ATTY. QUIÑONES: Drafts of the minutes, Your Honor.

13. HON. JUDGE: From when did the minutes, well, the minutes

14. come from, who made them.

15. ATTY. QUIÑONES: We understand—sorry to

16. interrupt, Your Honor.

17. HON. JUDGE: Go ahead.

18. ATTY. QUIÑONES: But we understand— we favor the,

19. the proposal of a special master in this case to supervise

20. the discovery of evidence. And not having to burden the court with

21. day-to-day issues of discovery of evidence. And so we

22. agree with that, that position.

23. HON. JUDGE: Exactly. But look, let me tell you. In this courtroom,

24. well, I, I know and you all know that there's a lot of work.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 47 of 69

1. But I don't like appointing masters. That's not a, a
2. matter taken lightly. Certainly here I'm
3. trying— almost always when I've appointed a
4. master, I give the, the discovery finalized
5. so that it can then continue, with, with, with the process of
6. assisting us.
7. But, I hope that after today you can
8. reach an understanding on the documentary evidence and can
9. purge what is truly relevant. That's why
10. we have this discussion, right? That's why I listen to you,
11. try to— I'm trying to really define what is that we'll
12. resolve, so that in order not to embark on
13. a discovery of evidence out of proportion and
14. that, and that won't really add anything to the controversy
15. that I have before me.

16. Because, again, using the example of the US
17. District Court, there's another matter over there.

18. ATTY. QUIÑONES: Well, if I may, Your Honor,
19. there's a matter that they are—

20. HON. JUDGE: There's another matter over there.

21. ATTY. QUIÑONES: They are related.

22. HON. JUDGE: Which has tangency with this one, yes.

23. ATTY. PUJOLS: Your Honor—

24. ATTY. QUIÑONES: The bond issuances are being challenged

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 48 of 69

1. in those proceedings, just as they are being challenged here,
2. Your Honor.
3. MALE VOICES: (Unintelligible).
4. ATTY. PUJOLS: Your Honor, that's totally false,
5. what he's saying.
6. ATTY. QUIÑONES: They are being challenged in an adversary
7. proceeding , the bonds issued by the Retirement System.
8. ATTY. PUJOLS: But that's not being challenged here. And
9. you're saying that we're challenging that.
10. HON. JUDGE: Counsel—
11. ATTY. QUIÑONES: The, the validity of
12. those issuances is being contested.
13. HON. JUDGE: No—
14. MALE VOICES: No—
15. ATTY. PUJOLS: No, sir.
16. ATTY. ANDRÉU: No one has contested them.
17. ATTY. HERNÁNDEZ: No one has contested them.
18. HON. JUDGE: Again. Here it's being alleged that UBS gave
19. an advice that deviated from the fiduciary duty that,
20. according to the plaintiffs, it had to the Retirement System. Because it
21. wanted to profit from that sale. Because as a result of that sale, it
22. collected \$35 million in commissions.
23. And then, the Retirement System followed
24. UBS' recommendations and by following UBS' recommendations,

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 49 of 69

1. well, it was negatively impacted because the
2. recommendations given by UBS did not generate the
3. expected results.
4. There's no mention here that those bonds are wrongly
5. issued, are illegal, whatever. I'm not going to resolve that—
6. ATTY. PUJOLS: It's not presented.
7. HON. JUDGE: —the validity of the bonds. They've already been issued.
8. ATTY. PUJOLS: Your Honor, you're right.
9. HON. JUDGE: There are some results.
10. ATTY. PUJOLS: You're right. And the damages, the damages,
11. what can happen—
12. HON. JUDGE: There is a difference between what's alleged over
13. there and what's alleged over here.
14. ATTY. QUIÑONES: Your Honor, we also did a—
15. HON. JUDGE: At least from the allegations of the Fourth
16. Amended Complaint, which simplified a lot the process since
17. well, if you were, were telling me of 2011 when we began,
18. when we had a bunch of defendants, well— but what we have
19. now is the action filed by the Retirement against UBS because it violated,
20. breached— because it basically breached its fiduciary duty in advising it
21. to get into this process. But you're not telling me that the sale
22. was illegal or anything of the sort.
23. ATTY. QUIÑONES: Well, we notified some
24. interrogatories, Your Honor, almost a month ago or more, that will

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 50 of 69

1. precisely clarify the plaintiffs' position and sought
2. information about other subject matters as well. Those answers
3. were due this past week. What we received was a Request for, for
4. a Protective Order.

5. In addition to the answer to the Request for Documents
6. that was notified two and a half years ago, we'd also like that
7. the plaintiffs be required to answer those
8. interrogatories. After that, Your Honor, we reserve the
9. right to take the depositions of the individuals who
10. gathered the documents that were produced last
11. Thursday. And also the deposition regarding the alleged
12. destruction of servers of the Retirement System by
13. Hurricane María.

14. I believe, believe that those are main aspects that
15. must be clarified in order to fully comprehend the
16. scope of, of the production that has been carried out in this case.
17. And see whether or not it's complete.

18. So we request that they answer the request for
19. documents, answer the interrogatories. And then we'll
20. take the depositions of the individuals that have more
21. knowledge of that production of documents and about the
22. matter of the, of the destruction, the alleged destruction of
23. the Retirement System's servers.

24. So we're clear on what we have. If we

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 51 of 69

1. really have everything that, that is
2. physical or electronic documentation of the Retirement System
3. relevant to this case .
4. ATTY. PUJOLS: Your Honor, attorney Pujols for the,
5. representing the plaintiffs. The plaintiffs have no
6. objection to producing every document they
7. find, that indeed exist. Neither to answering the
8. interrogatories. Obviously, provided that the defendants
9. also comply with their obligation to answer the
10. Request for Production of Documents as they were presented
11. and not in the general manner in which they handed them over, as
12. we did as well. That must, must be done like that.

13. As for the controversy asserted in this case,
14. it definitely has nothing to do with whether or not
15. the bonds are null. A damage has resulted here. If the
16. bonds, if the bonds are eventually declared null, the amount of
17. the damages may perhaps vary vis a vis if declared that they are valid.
18. But that controversy is not submitted here nor is part of this
19. case, as you very well say. And it seems that counsel Quiñones
20. hasn't, hasn't understood.

21. We are not asking, in this case, that the bonds
22. be declared null. But rather to simply compensate—
23. UBS— for the damages caused by the wrong advise given by
24. UBS in violation to its fiduciary duties. That's all.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 52 of 69

1. As for the production and the requirements, I understand
2. that maybe we should carry out the production in two stages. And
3. that would ease, as counsel Andréu said, maybe we should
4. concentrate first on whatever necessary to be able to
5. elucidate or adjudicate the Motion for Summary Judgment that has
6. been filed and continue with the production, but maybe divided
7. in two stages to make it easier. I submit this as a
8. possibility.

9. ATTY. QUIÑONES: Your Honor, we need—

10. HON. JUDGE: Tell me.

11. ATTY. ANDRÉU: Briefly—

12. —so, so you can see why is it that I say that we have to meet
13. and why is it important, really, in the best of good faith, what I want
14. is to see how can we solve this and speed up the process. Because
15. look, and I'm not blaming anything to anyone.

16. The index of documents produced by UBS on May 26, 2017,
17. that I have here, and I can show it to you, shows that they
18. themselves produced the financial statements of, of the Retirement s
19. System as of 2008, 2009, 2010, 2011, and 2012, and 2013 the last one, of
20. June 30.

21. HON. JUDGE: Of the Retirement System?

22. ATTY. ANDRÉU: Of the Retirement System. So, that's why earlier I
23. said from there that they themselves had sent them to us. And the thing
24. is, look, I don't want to get here in, into fights that are not

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 53 of 69

1. necessary. Brother counsel just got here. I just got here as well.
2. That's why maybe I understand this a little bit more because
3. I have been able to see this more thoroughly in trying to
4. catch up, right?
5. And the problem I'm seeing here is that I, once again,
6. if brothers counsel sit with the 30-something thousand documents
7. plus the ones we'll give them today. That, again, I'm saying this in the best
8. of good faith, to give everything. Then give them 120 days, judge. And we'll
9. meet with them, we answer the, the request. They answer ours
10. because we have objected to it. It's even in the initial
11. report. And then, we sit down to see what
12. we have.

13. Now, the thing is that we cannot lose track of
14. what is pending in this court. And the Rules of Civil Procedure
15. must be complied with. We filed a Motion for
16. Summary Judgment. They had to oppose and they did. And
17. regarding several facts proposed as uncontroverted, and
18. have requested discovery for that. And what I'm seeing
19. here is that it's turning into, to
20. "give me everything and I want to see everything".

21. And we have given them everything, fine. But, but, but let's put this
22. case back on track. If there's a Motion for Summary Judgment, have them
23. answer the, the motion pursuant to Rule 36.6. And they have stated the
24. facts for which they want the discovery, which are three. I can read them

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 54 of 69

1. to you. Three of them really meaningless. But, but we've given everything.

2. And then, answer. Yes— the court will then have to
3. resolve the motion, because unfortunately that's the process. And
4. then, we'll see. We'll see because, cause the court may
5. do several things. One is deny it. But by denying it, the
6. jurisprudence provides that findings of facts must be
7. made, that aren't— uncontroverted. And then, when the court makes
8. the uncontroverted statement of facts and
9. which ones are controverted, the discovery is limited
10. to those uncontroverted. Or the court may decide to
11. grant the Motion for Summary Judgment. And then,
12. the discovery will also be limited to the second stage of the case,
13. as for the damages, right? So the Motion for Summary Judgment
14. mechanism is there and will limit the matter.

15. We certainly acknowledge that we had to hand over
16. some documents. We are handing them over, so they can
17. finish their opposition. It isn't that—here, to be clear.
18. They already opposed. They filed documents, filed
19. sworn statements. And what's left, again, two or three findings of
20. fact that they have said that are not in position to yet
21. because they didn't have the documents.

22. Well, as for that, they can oppose to it. They can oppose to it
23. in 120 days. And then, continue from there, Your Honor. But we cannot
24. continue undermining the process with a Motion for Summary

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 55 of 69

1. Judgment still pending. Then, him asking and goes on asking and asking,

2. asking things that they themselves produced. And that's the process.

3. ATTY. QUIÑONES: Your, I don't know— I don't know what opposition

4. did brother counsel read. But the Opposition to the Motion for Summary

5. Judgment filed by the defendants in this case has over 90 pages,

6. in which we repeatedly stated, "This motion cannot be resolved without

7. having completed the discovery of evidence".

8. The defendants, the court can recall, in 2000— 2007 raised

9. the defense of, of statute of limitations or Motion to Dismiss.

10. And the court stated that that a discovery had to be carried out.

11. HON. JUDGE: Look counsel. The Court of Appeals already

12. resolved that.

13. ATTY. QUIÑONES: And the Court said—

14. HON. JUDGE: And revoked. Revoked what I did.

15. ATTY. QUIÑONES: —and the Court of—

16. HON. JUDGE: So we began with the Fourth Amended

17. Complaint.

18. ATTY. QUIÑONES: And we'll raise—

19. HON. JUDGE: Just so we're clear on this. I'm clear about it.

20. That is revoked. Wasn't even modified, it was revoked. So that, for the

21. purposes of this case, this began with the Fourth Amended Complaint. And

22. that's where we are.

23. ATTY. QUIÑONES: And regarding the subject of statute of limitations,

the Court of Appeals said that it had to be resolved as a matter of

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 56 of 69

1. Motion for Summary Judgment. Not as, as a matter of Motion

2. to Dismiss.

3. HON. JUDGE: What the Court of Appeals said was that I had

4. to make findings of fact, which I didn't do, which I

5. should have done. And to make them, well then, to that end we're

6. discussing who we'll be conducting the discovery

7. of evidence.

8. Regarding the Opposition to the Motion for Summary

9. Judgment, since I am clear that the defendants admitted a series of

10. facts, about 20 facts. And objected 18, and

11. from 21 to 76.

12. ATTY. ANDRÉU: For several reasons.

13. ATTY. QUIÑONES: Yes.

14. HON. JUDGE: For several reasons.

15. ATTY. ANDRÉU: Not because they hadn't

16. necessarily conducted discovery.

17. ATTY. QUIÑONES: And we need it to be completed —

18. ATTY. ANDRÉU: Many of the reasons because they believe that

19. the evidence is not admissible. We'll reply to that.

20. HON. JUDGE: And another about the evidence, which I have here,

21. the Kobre report.

22. ATTY. QUIÑONES: Kobre & Kim.

23. HON. JUDGE: Kobre & Kim. Which was attached—

24. ATTY. QUIÑONES: Correct

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 57 of 69

1. HON. JUDGE: —for the defendants of the case to,
2. to, according to their motion, dispute.

3. ATTY. QUIÑONES: Well, it's hearsay evidence, that report,
4. as the Conway MacKenzie report is hearsay evidence, Your Honor.
5. But that report shows, that report refutes the main conclusions
6. made by Conway MacKenzie. But it's also hearsay evidence
7. as well. We brought it here to show that is missing—

8. ATTY. ANDRÉU: We're not going to get into that now.

9. ATTY. QUIÑONES: Excuse me, brother counsel. We brought it
10. up, Your Honor, only to establish that the court must have the benefit
11. of having the evidence in order to make its own
12. findings and not rely on hearsay evidence, neither on Conway
13. MacKenzie nor Kobre & Kim. But rather to have a full discovery of evidence
14. so that the parties, then, can litigate this case based on the
15. evidence, not on counsel's arguments and theories, but rather
16. based on the evidence.

17. That hasn't happened here. There are no answers to the
18. requests for production, there are no answers to
19. interrogatories. And what the plaintiffs pretend that we tell
20. them the documents that are missing. I don't know
21. what's inside the files of the Retirement System. They are the ones
22. who must act dul— with due diligence to produce.

23. HON. JUDGE: Exactly. But the plaintiffs do need you to
24. tell them what documents do you want.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 58 of 69

1. ATTY. QUIÑONES: Well, there's a Request for
2. Production.
3. HON. JUDGE: What documents will they use.
4. ATTY. QUIÑONES: There's a Request for Production
5. from two and a half years ago.
6. HON. JUDGE: Exactly. And we'll start from there, that yesterday
7. you were handed a disc full of papers, of documents.
8. Let's do the following.
9. ATTY. HERNÁNDEZ: If I may, your Honor. The
10. Request for Production is of the Third Amended Complaint.
11. Already the four— we are in the Fourth Amended Complaint.
12. ATTY. ANDRÉU: (Unintelligible).
13. ATTY. QUIÑONES: There is no material difference, Your Honor.
14. No material difference. There are 6 or 7 paragraphs that make reference
15. to the Third Amended Complaint.
16. HON. JUDGE: (Unintelligible).
17. ATTY. QUIÑONES: But either way, the fact that there
18. are some, some allegations that changed, which are minimal,
19. for example, in regard to, to counsel Mayol, who at the time
20. was a defendant and there were allegations as to his
21. conduct as administrator of the Retirement System, now
22. submits a statement for the plaintiffs. Well, they don't want
23. to answer those interrogatories.
24. They made that allegation with respect to the counsel

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 59 of 69

1. Mayol and we ne— we are entitled to conduct discovery of
2. evidence. Regardless of had been alleged or not in the
3. Fourth Amended Complaint. So, those
4. allegations are judicial admissions from the plaintiffs and we
5. are entitled to conduct discovery. But they are, they are a few
6. differences.

7. ATTY. ANDRÉU: The allegations are not an issue of anything.

8. ATTY. QUIÑONES: The gross, gross, the gross of the
9. requirement does not depend on, whether it is Third or Fourth
10. Amended Complaint. That was frankly a pretext
11. not to respond the request.

12. HON. JUDGE: OK. Let's do the following. Get your
13. agendas, because you have to meet. Again. The plaintiffs,
14. the plaintiffs tell me how much time do you
15. need to answer, answer the Set of
16. Request of Information notified by the defendants.
17. Answer it. Not a motion "Here you have".

18. ATTY. HERNÁNDEZ: But is it the Request of the Third
19. Amended Complaint?

20. HON. JUDGE: Whichever is still pending.

21. ATTY. HERNÁNDEZ: Because there's no—

22. HON. JUDGE: Aren't there... haven't they sent another one?

23. ATTY. HERNÁNDEZ: They haven't sent another request.

24. ATTY. QUIÑONES: Your Honor, again, there are only a few

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 60 of 69

1. paragraphs that mention the Third Amended Complaint.

2. They should answer it.

3. HON. JUDGE: So let's do this. I'll do it

4. another way. I'll do it this way. The plaintiffs are

5. going to review every document they have.

6. FEMALE VOICE: Defendants.

7. ATTY. QUIÑONES: Defendants.

8. HON. JUDGE: Sorry, defendants. Every document what were

9. required— sent. From that review, if

10. there's something that's not clear, if there's anything to supplement,

11. will send that requirement of what's missing. All right? Of what's, of

12. what's missing.

13. ATTY. QUIÑONES: It's that, it's that no—

14. HON. JUDGE: Look, if the financial statements are in that

15. set of documents, well don't request them, because there they are.

16. ATTY. QUIÑONES: But shouldn't the process, under the

17. Rules of Procedure that the plaintiffs answer the

18. request that we notified two and a half years ago?

19. HON. JUDGE: What happens is that since you are saying that is

20. from the Third Amended Complaint, then I want, I want that any

21. reference to the Third Amended Complaint be elimi—

22. eliminated and overcome. I'll give the same opportunity to

23. both parties.

24. ATTY. QUIÑONES: Your Honor, if I may. Of 73

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 61 of 69

1. requests in the paragraph of requests, 54 make no

2. reference to the Third Amended Complaint.

3. HON. JUDGE: Even better. Eliminate them and put those

4. making reference. Easier.

5. ATTY. QUIÑONES: But they—

6. HON. JUDGE: If you have it, if you have it, the, the

7. requests, then eliminate everything that has to do with the

8. previous complaint. Do you understand me?

9. ATTY. QUIÑONES: But they are, they are facts that

10. anyway we want to make discovery about them. For example,

11. the, the subject of the role of, of counsel Mayol. Regardless of

12. having been a defendant at some point and that now—

13. HON. JUDGE: Counsel Mayor is notified in the Joint

14. Report as a witness. So you'll be able to question him as he

15. is notified as a witness. So you'll be able to question him.

16. Are we clear?

17. There's a sworn statement that is attached to the Motion for

18. Summary Judgment. Well then you can question him, because is

19. attached. That evidence is used by the plaintiffs. You can make

20. questions about that. There are minutes attached to the Motion

21. for Summary Judgment. You can make questions about that.

22. Are we clear?

23. ATTY. QUIÑONES: We can also, for Monday

24. notify, then, a request adjusted to—

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 62 of 69

1. HON. JUDGE: Yes.
2. ATTY. QUIÑONES: We'll do that; for Monday.
3. HON. JUDGE: Tell me when can you notify it.
4. ATTY. QUIÑONES: Monday, for next Monday
5. we can notify the requirement.
6. HON. JUDGE: For Monday, for Monday. Period chosen
7. by the defendants.
8. Plaintiffs, tell me how long will it take to answer it.
9. And I want it answered pursuant to the rules.
10. ATTY. HERNÁNDEZ: Thir— ah? Forty-five.
11. MALE VOICE: Forty-five.
12. HON. JUDGE: Forty-five days. The plaintiffs asked for
13. 45 days. Put it in the minutes.
14. ATTY. PUJOLS: From Monday.
15. HON. JUDGE: From Monday, from the receipt, of course.
16. From the receipt of the Set of Interrogatories.
17. Will the plaintiffs notify an— an interrogatory or a
18. Request for Information to the defendants?
19. ATTY. ANDRÉU: Well, it's been, it's been done—
20. HON. JUDGE: No, because we're starting.
21. ATTY. ANDRÉU: We'll do it. We'll do it again—
22. We'll send it Monday again.
23. HON. JUDGE: Will be sent Monday. Look, make an analysis
24. of what you have. Don't ask for what you have, in order to move forward.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 63 of 69

1. FEMALE VOICE: In order to move forward
2. HON. JUDGE: OK. Well, defendants have the same
3. 45 days that I gave the plaintiffs to answer.
4. ATTY. QUIÑONES: Your Honor, Your Honor, we request
5. until Wednesday to notify the request. One week
6. after tomorrow.
7. HON. JUDGE: They asked until Wednesday.
8. ATTY. ANDRÉU: We also—
9. HON. JUDGE: Any objection?
10. ATTY. ANDRÉU: None. Until Wednesday the plaintiffs,
11. then also to (unintelligible).
12. ATTY. QUIÑONES: And Your Honor, the pending answers
13. to the interrogatories notified a month ago?
14. We would then wish that they'd be answered.
15. HON. JUDGE: Within the 45 days they'll answer the Set of
16. Interrogatories that are still pending. OK. What else on the
17. discovery of evidence? Anything else?
18. ATTY. QUIÑONES: Well, after that, well, there will
19. be another discovery, for sure, but—
20. HON. JUDGE: After that, after that, will the defendants
21. be in position to be able to answer the, the allegations
22. relevant to the Motion for Summary Judgment 18 and 21 to 76, which
23. were the ones objected to because you didn't have the minutes,
24. didn't have the evidence, etc.?

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 64 of 69

1. ATTY. QUIÑONES: Well, we also need to take
2. depositions, Your Honor. We first have to assure that we
3. have a complete production. And afterwards, then, take the
4. depositions of witnesses. That's the discovery of evidence that,
5. at some point the court stated that have to be conducted
6. before, before addressing the motions filed by the defendants.
7. So we have to—

8. HON. JUDGE: OK.

9. ATTY. QUIÑONES: —conduct a complete discovery.

10. HON. JUDGE: Well, then let's do this.

11. ATTY. ANDRÉU: I, I propose, judge—

12. HON. JUDGE: Go ahead.

13. ATTY. ANDRÉU: It's just that Rule 36.6 provides, no—
14. rejects, to put it that way, that the other party of a Motion for
15. Summary Judgment make what brother counsel is doing and say, "I
16. need to make all the discovery and take all the
17. depositions". He has to, as per that rule, establish specifically
18. why and based on what each discovery or deposition
19. that he wants to take on what's going to help him specifically to oppose.

20. And that's the jurisprudence of the Supreme Court. It's not coming
21. to say, "I now want to make discovery. We take seven
22. years and then, answer the Motion for Summary Judgment".
23. Because that is not what this mechanism is for.

24. HON. JUDGE: OK.

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 65 of 69

1. ATTY. QUIÑONES: In the 90 pages of the opposition we
2. explained why we needed that discovery with
3. regard to each of the paragraphs of the motion.

4. HON. JUDGE: OK. Let's do the following. I'll
5. resolve the Motion for Summary Judgment with the motions, with the
6. motion in opposition. And we go on.

7. After the 45 days, look for a date to meet and
8. establish a plan for the taking of depositions. After having answered
9. the interrogatories or the evidence, the sets of request of
10. information that will be notified. Look for a date to meet
11. and establish a plan for the depositions.

12. ATTY. ANDRÉU: Your Honor, we'd like—
13. We haven't replied to the opposition filed by brothers counsel
14. for the defendants to our Motion for Summary Judgment as
15. we thought that they were conducting a discovery to
16. supplement it.

17. If, if you won't allow, then, them to supplement it
18. and won't grant them a term, we do want, we would like a
19. term to reply to their argument that the minutes are
20. hearsay evidence or that they should not be admitted—

21. HON. JUDGE: The Court will resolve. Denied,
22. counsel, to the reply. Look for dates.

23. ATTY. ANDRÉU: Date to meet?

24. HON. JUDGE: To meet and make a work plan

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 66 of 69

1. to take the depositions.
2. ATTY. QUIÑONES: Would it be, obviously, after the
3. 45 days?
4. HON. JUDGE: After having reviewed all those
5. documents and can, be in position to take
6. depositions.
7. (Counsel talk among themselves.)
8. ATTY. QUIÑONES: February 20 is good.
9. HON. JUDGE: Time and place?
10. ATTY. ANDRÉU: At the offices of counsel Vicente.
11. (Counsel talk among themselves.)
12. HON. JUDGE: February 19?
13. ATTY. QUIÑONES: Yes.
14. HON. JUDGE: You'll meet on February 19 at the offices of
15. Vicente & Cuebas—
16. MALE VOICE: At 10:00 a.m.
17. HON. JUDGE: —at 10:00 a.m. You'll establish, in
18. light of— by that date you must have gathered all the
19. documentary evidence and answered those requirements of
20. of evidence— a schedule for the depositions.
21. And on or before February 28, you'll submit a joint
22. motion notifying your plan to the court. I receive it and in light of
23. the dates therein, I'll set a status conference of the
24. proceedings for later, for a date in after the depositions

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CERTIFIED TRANSLATION:

TRANSCRIPT OF HEARING

HELD TUESDAY, NOVEMBER 26, 2019

Page 67 of 69

1. have been taken. All right?

2. ATTY. ANDRÉU: In that plan—

3. HON. JUDGE: By February 28 I should have a joint motion

4. with your work plan. And I'll look at the dates that

5. you'll put there of the depositions to be taken. And I will

6. set a hearing after the depositions are taken.

7. I can't give you that date right now because I have

8. to wait for you to, to meet and establish the schedule of

9. depositions. Because I want to hold the, the, the status conference

10. after the depositions have been taken. All right? Or at least

11. that the deposition process is moving along. Agreed? Anything else?

12. MALE VOICE: Nothing further for us.

13. HON. JUDGE: Well, thank you all very much. Have a nice day.

14. ATTY. HERNÁNDEZ: Thank you very much, Your Honor.

15. HON. JUDGE: Thanks for your appearance. You're

16. excused.

17. ATTY. QUIÑONES: Thank you.

18. MALE VOICE: (Unintelligible.)

19. HON. JUDGE: Thank you.

20. (Today's proceedings conclude at t 11:31 a.m.)

21.

22.

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CERTIFIED TRANSLATION:
TRANSCRIPT OF HEARING
HELD TUESDAY, NOVEMBER 26, 2019

Page 68 of 69

- 1.
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LIST OF ERRATA

(Specify page and approximate line)

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CERTIFIED TRANSLATION:
TRANSCRIPT OF HEARING
HELD TUESDAY, NOVEMBER 26, 2019

Page 69 of 69

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CERTIFICATION OF THE TRANSCRIPT

I, GLADYS RODRÍGUEZ FORNARIS, MA Translation (UPR 1995),
hereby certify that to the best of my knowledge and abilities, the foregoing
document is a true and correct transcript of the official recording in the
digital audio records under the custody of the Court for the hearing
held Tuesday, November 26, 2019 in the above-captioned case.

I further CERTIFICATE that I have no pecuniary interest in the
outcome of this case.

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